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IN THE

Supreme Court of the United States

October Term, 1952
No. 517

OLIVE B. BARROWS, RICHARD PIKAAR and M. M. O'GARA,
Petitioners,

vs.

LEOLA JACKSON,
Respondent.

Stipulated Consent to File Brief as Amici Curiae and BRIEF FOR 48 PROPERTY OWNER ORGANIZATIONS AS AMICI CURIAE.

JOHN M. ABBOTT,
CARL T. FETTERLY,
GILMAN & SHEARER,
HOWARD W. HUNTER,
PHIL H. JACKSON,
LATHAM & WATKINS,
OVERTON, LYMAN, PRINCE & VERMILLE,
JOHN H. PELLETIER,
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Respondent.

STIPULATED CONSENT TO FILE BRIEF AS AMICUS CURIAE.

It is hereby stipulated and agreed pursuant to Rule 27 (9)(a) of the Revised Rules of the Supreme Court of the United States that the following named organizations may file their brief as *amici curiae* in the above entitled case, urging that the decision of the District Court of Appeal, Second Appellate District, State of California, be reversed.

Affiliated Neighbors.
Angeles Mesa Neighbors Association.
Annandale District Improvement Association.
Associated Neighbors.
Chesterfield Square Association.
Citizens United, Inc.
Cudahy Improvement Association.
Florence District Taxpayers Civic Association.

Hancock Park Neighbors, Inc.
Harvard Neighbors Association.
LaFayette Square Improvement Association.
Loyal Neighbors Association.
Nadeau District Property Owners Association.
Neighborhood Protective Association, Inc.
Neighborly Endeavor, Inc.
The Parks Community Association.
Steadfast Neighbors Committee.
United Homeowners, Inc.
United Neighbors, Inc.
Vermont Square Neighbors, Inc.
Los Angeles County, State of California.
Southwood Improvement Association, Inc.
South San Francisco, California.
Highland Park Civic Association.
United Streets Association.
Highland Park, Michigan.
Santa Fe Place Improvement Association.
Kansas City, Missouri.
Arkansas Avenue Community Association.
Brentwood Terrace Citizens Association.
Brightwood Citizens Association, Inc.
Brookland Citizens Association.
Burroughs Citizens Association.
Capital Hill South-east Citizens Association.
Cathedral Heights-Cleveland Park Citizens Association.
Citizens Association of Takoma Park, Inc.
Citizens Forum of Columbia Heights.
Citizens Protective Alliance, Inc.

Columbia Heights Citizens Association.
Congress Heights Citizens Association.
Michigan Park Citizens Association.
Minnesota Avenue-River Terrace Citizens Association.
National Gateway Citizens Association.
North Capitol Citizens Association.
North Cleveland Park Citizens Association.
North Washington Council of Citizens Associations.
Palisades Citizens Association.
Petworth Citizens Association, Inc.
Rhode Island Avenue Citizens Association.
Summit Park Citizens Association.
Thomas Circle Citizens Association.
Washington Highlands Citizens Association.

Washington, D. C.

April 3, 1953.

Respectfully submitted,

JOHN C. MILES,
J. WALLACE MCKNIGHT,
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Petitioners,

vs.

LEOLA JACKSON,

Respondent.

BRIEF AMICI CURIAE.

This brief is filed on behalf of the members of the following organizations, *amici curiae,* pursuant to stipulated consent of all parties and Rule 27(9)(a) of the Revised Rules of the Supreme Court of the United States:

Affiliated Neighbors.

Angeles Mesa Neighbors Association.

Annandale District Improvement Association.

Associated Neighbors.

Chesterfield Square Association.

Citizens United, Inc.

Cudahy Improvement Association.

Florence District Taxpayers Civic Association.

Hancock Park Neighbors, Inc.

Harvard Neighbors Association.
LaFayette Square Improvement Association.
Loyal Neighbors Association.
Nadeau District Property Owners Association.
Neighborhood Protective Association, Inc.
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The Parks Community Association.
Steadfast Neighbors Committee.
United Homeowners, Inc.
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North Cleveland Park Citizens Association.
North Washington Council of Citizens Associations.
Palisades Citizens Association.
Petworth Citizens Association, Inc.
Rhode Island Avenue Citizens Association.
Summit Park Citizens Association.
Thomas Circle Citizens Association.
Washington Highlands Citizens Association.

Washington, D. C.

Statement of Interest of Amici Curiae.

These *amici curiae* are organizations of home owners and small property owners in the states indicated following their names. Their members own several thousand homes which are protected by private contracts from monetary loss as real as loss by fire which inevitably results from the use and occupancy of a neighboring house by non-Caucasians. These valid contracts do not prevent the use and occupancy any more than fire insurance prevents fire but the loss is prevented in the same way. Their members have property rights in these private contracts the same as they have in their contracts of fire insurance which are endangered by the decision of the District Court of Appeal of the State of California, Second Appellate District in the above case, *Barrows v. Jackson* (1952), 112 Cal. App. 2d 534, 247 P. 2d 99.

Statement of Facts.

To conserve the time of this Court, these *amici curiae* adopt the statement of facts set forth in petitioner's petition for certiorari and incorporate the same herein by reference.

ARGUMENT.

The Petitioners Have Rights Guaranteed by the Constitution as Universally Interpreted Which the Decision of the District Court of Appeal, Second Appellate District, State of California, Has Taken From Them Without Due Process of Law.

This proposition is so self-evident, in view of the facts of this case, that it is difficult to simplify it further in argument. It is believed that space will be best served by presenting the following from leading cases and authorities:

> "The obligation of a contract is 'the law which binds the parties to perform their agreement.' Sturges v. Crowninshield, 4 Wheat. 122, 197, Story, op. cit. Sec. 1378. This court has stated that 'the laws which subsist at the time and place of the making of a contract and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms This principle embraces alike those which affect its *validity*, construction, discharge and enforcement . . . *Nothing can be more material to the obligation than the means of enforcement . . . The ideas of validity and remedy are inseparable and both are parts of the obligation which is guaranteed by the Constitution against invasion.*" (Emphasis added.)
>
> *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U. S. 398, 429.

> "The Fifth Amendment 'is a limitation only upon the powers of the general government,' (Citing cases) and is not directed against the action of individuals . . . And the prohibitions of the Fourteenth Amendment 'have reference to state action exclusively, not

to any action of private individuals.' Virginia v. Rives, 100 U. S. 313, 318; U. S. v. Harris, 106 U. S. 629. 'It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment.' Civil rights cases, 109 U. S. 3, 11. *It is obvious that none of these amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property and there is no color whatever for the contention that they rendered the indenture void.*" (Emphasis added.)

Corrigan v. Buckley, 271 U. S. 323, 330.

See:

Correll v. Early (1951), 205 Okla. 366, 257 P. 2d 117, 120.

The contract sued upon is a lawful one [R. 34]. The Respondent is not entitled to complain of court action to which she has given her consent for consideration which she has received and enjoyed. No state action to the detriment of Respondent has been set in motion.

"The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,— . . ."

Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 435.

"It is well settled that while, in a general sense, the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing. It is true the Legislature may not withdraw *all* remedies, and thus, in effect, *destroy the*

contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract according to the usual course of justice as established when the contract was made. *Neither could it be done without impairing the obligation of the contract.* But it is equally well settled that the *Legislature* may modify or change existing remedies, or prescribe new modes of procedure, without impairing the obligation of contracts, *provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract.*" (Emphasis added.)

Oshkosh Water Works Co. v. Oshkosh, 187 U. S. 437, 439; 47 L. Ed. 249, 250.

"It is true that what is prohibited is legislative action the effect of which would be the impairment of a contract; but what the legislature may not do in this regard certainly the courts may not do. *The power that is here denied the legislature was not reserved to the courts.* Great as are the equity powers of the courts, it is yet to be suggested that included in these powers is the power to *nullify* or impair *a legal contract* solemnly and intelligently entered into between competent parties."

Galey v. Guffey, 248 Pa. 523, 528, 94 Atl. 238.

Restrictions of a contractual nature are valuable property rights. They cannot be taken away even under power of eminent domain without compensation.

Allen v. City of Detroit, 167 Mich. 464, 133 N. W. 317.

"There is nothing unjust in holding him [the white vendor] to his bargain insofar as he alone

is concerned, but the state is denied power to enforce it [the covenant] because enforcement would work a prohibited discrimination against the buyer because of his race." (Interpretation added.)

Prof. McGovney, 33 Cal. L. Rev. 199, p. 21.

The above mentioned prohibition clearly has reference only to enforcement by injunction.

"To say that the Constitution forbids direct and actual *enforcement* of a racial covenant by injunction the only remedy which is intended to and necessarily does prevent Negroes from acquiring and using restricted property—is not to say that it forbids awarding a neighboring property owner such damages, if any, as an executed sale to a Negro may be shown to have caused."

Hurd v. Hodge, 162 F. 2d 233, 240, footnote 22.

Where specific performance of a restrictive covenant would be against equitable principles, equity will not enforce it, but will leave the complainant to his remedy at law.

Rombauer v. Compton Heights Christian Church, 328 Mo. 1, 40 S. W. 2d 545.

The same rule applies where specific performance of a restrictive covenant would be against constitutional principles.

"Injunctive relief in the enforcement of a restriction may be and frequently is denied without impairment to the covenant as a basis for damages for its breach."

Welitoff v. Kohl, 105 N. J. E. 181, 189; 147 Atl. 390, 393.

See:

Borssuck v. Pantaleo, 183 Md. 148, 36 A. 2d 527.

"The general rule of law of contracts is well settled that in certain cases a breach of contract may give rise to two remedies, one an action at law for damages for the breach, the other a suit in equity for specific performance of the contract."

Weiss v. Leaon, 359 Mo. 1054, 1060; 225 S. W. 2d 127.

"For the breach of a valid agreement there is ordinarily a remedy by way of damages. The fact that another remedy, specific performance, is ruled out because of constitutional reasons, need not necessarily affect the remedy by way of damages *unless it, too, is unconstitutional* under the circumstances." (Emphasis added.)

Weiss v. Leaon, 359 Mo. 1054, 1061; 225 S. W. 2d 127.

See:

Correll v. Early (1951), 205 Okla. 366; 257 P. 2d 117, 120.

Loren Miller, "Race Restrictions on Ownership of Land." 7 Lawy. Guild Rev. 99 (May-June, 1947).

At page 108:

"It is of course true that any man may contract freely with reference to his own property; he may even bargain away his own constitutional rights in the process."

At page 111:

"Our vision has become clearer too as regards the equal protection clause of the Fourteenth Amend-

ment. Courts, state and federal, have reiterated what we have always known, and not always practiced, that it is the individual who is entitled to the equal protection of the law."

n the case at bar, the only rights involved are the rights f petitioners and respondent, *i. e.*, their rights to contract nd their rights in their contracts.

"It [this Court] has no jurisdiction to pronounce any statute, either of the state or of the United States, void, because irreconcilable with Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered: one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. These rules are safeguards to sound judgment. It is the dictate of wisdom to follow them closely and carefully." (Interpretation added.)

Liverpool, N. Y. & Phila. S. S. Co. v. Commissioners Immigration, 113 U. S. 33, 39.

"That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control and to which it must give a measure of consideration, may be freely admitted, *but its solution cannot be promoted by depriving the citizens of their constitutional rights and privileges.*"

Buchanan v. Warley, 245 U. S. 60, 80-81.

The decision of the District Court of Appeal, Second Appellate District, State of California, in the case at bar has deprived the petitioners of their constitutional rights.

Conclusion.

Nothing could be more detrimental to our economic and governmental system of free enterprise than for our courts to refuse to enforce admittedly valid private contracts [R. 34][1] between the original parties thereto. This is most especially true when, in order to shirk this responsibility, the courts must depart from all rules of contract and constitutional law. The respondent had a constitutional right to make the promise she made to petitioners. She was fully compensated for her promise and petitioners have a constitutional right to recover such actual damages as they can prove resulted to them when the event happened which respondent promised would not happen.

We respectfully urge that the decision of the District Court of Appeal, Second Appellate District, State of California, be reversed.

Dated: April 3, 1953.

Respectfully submitted,

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---

[1] *Shelley v. Kraemer*, 334 U. S. 1, 13; *Corrigan v. Buckley*, 271 U. S. 323.

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